

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

BUFORD CARL BROWN, III,

CASE NO.: 17-10021-KKS

CHAPTER: 13

Debtor.

ORDER GRANTING AMENDED MOTION TO DISMISS DEBTOR'S
BANKRUPTCY CASE WITH PREJUDICE (DOC. 19), GRANTING
AMENDED MOTION FOR PROSPECTIVE RELIEF (DOC. 20); AND
GRANTING ADDITIONAL RELIEF AS TO KIM BROWN (*In re*
Brown, CASE NO. 15-10042-KKS)

THIS CASE came before the Court for hearing on March 2, 2017 upon the *Amended Motion to Dismiss Debtor's Bankruptcy Case with Prejudice*, and *Amended Motion for Prospective Relief*, both filed by Goshen Mortgage REO LLC ("Goshen") (Docs. 19 and 20, collectively "the Motions"). The facts and history of this case, together with the related bankruptcy cases filed by the Debtor's mother, Kim Brown, warrant granting dismissal of this case with prejudice, granting Goshen prospective relief from the automatic stay pursuant to 11 U.S.C. § 362, and granting additional relief in the case of *In re Brown*, 15-10042-KKS.

THE FACTS

Debtor, Buford Carl Brown, III, (“Mr. Brown”) is 24 years old; this is his first bankruptcy. Mr. Brown’s mother, Kim Brown, on the other hand, is no stranger to the bankruptcy system. Since 1998 Kim Brown has been a debtor in no fewer than eleven (11) bankruptcy cases filed in this Court; she filed the last four cases during the past five years. Kim Brown’s goal in the cases she has filed since 2012 has been to stop the progress of a mortgage foreclosure. Mr. Brown’s goal in having filed this case is the same. Both Mr. Brown and Kim Brown are self-represented.

The property at issue is a single family home in Newberry, Florida, where Kim Brown, Mr. Brown, and apparently other of their respective family members reside (“the Property”). Kim Brown, who is obligated to Goshen on a note and mortgage, has not made mortgage payments since 2011, so Goshen or its predecessor in interest filed a mortgage foreclosure Complaint against her and others in January of 2012 (the “Foreclosure”).¹ After a final judgment of foreclosure, and after a foreclosure sale

¹ See Goshen’s Exhibit 2, copy of Docket in *US Bank National Association Trustee of the Oseberg Trust III v. Kim W Brown, et al.*, in the Circuit Court, Eighth Judicial Circuit, in and for Alachua County, Florida, Case No. 01-2012-CA-000118. Kim Brown denies having signed this note and mortgage, and has been litigating, or attempting to litigate, that issue in state court, *see infra*.

conducted by the Clerk of the Circuit Court, Goshen obtained title to the Property by virtue of a Certificate of Title issued by the Clerk of the Circuit Court for Alachua County, Florida on July 24, 2015.² Since obtaining title, Goshen has been attempting to gain possession of, and to have Mr. Brown, Kim Brown, and all other residents or tenants, vacate the Property. Goshen's efforts have been thwarted by Kim Brown's multiple bankruptcy cases, by appeals she has filed and pursued in state court, and now by this case.³

This Court held an evidentiary hearing on the Motions on Thursday, March 2, 2017, in Gainesville, Florida. At the hearing appeared Goshen's counsel and corporate representative, Mr. Brown, Kim Brown, and an attorney for the Chapter 13 Trustee. Among other things, at the final hearing Mr. Brown admitted that he filed this Chapter 13 Petition in order to again stop Goshen from finalizing the foreclosure.⁴ From witness

² See Doc. 47, Exhibit "A".

³ At a hearing in state court held on November 30, 2016, Kim Brown attempted to prevent issuance of a Writ of Possession in favor of Goshen on the basis that an appeal she had filed remained pending. The Magistrate Judge overruled Kim Brown's objection, finding that the appeal had been resolved. See Doc. 54-5, *Report and Recommendation of General Magistrate*, dated December 1, 2016. At the conclusion of that hearing, Goshen voluntarily agreed to permit Mr. Brown, Kim Brown and the other occupants of the property to remain there until January 16, 2017. *Id.* at p. 3. Mr. Brown filed the petition commencing this case ten days later, on January 26, 2017. Doc. 1.

⁴ Specifically, Mr. Brown filed the instant case to avoid the effects of a Writ of Possession issued in the state court that commands the Sheriff of Alachua County to remove Mr. Brown and all other "tenants" from the Property. See Doc. 54, Exhibit "G".

testimony and facts that appear of record in this case and Kim Brown's prior bankruptcy cases, the Court makes the following findings of additional fact:

a. Mr. Brown's father, Buford Carl Brown, Jr., passed away in January 2005, when Mr. Brown was approximately twelve years of age.

b. Before he died, Mr. Brown's father apparently signed a will.⁵ This will provided that the mortgage(s) on the Property should be paid out of life insurance proceeds, after which the Property should be deeded to Mr. Brown.

c. In July of 2005, someone, apparently Kim Brown, sent approximately \$96,000 to the company that at that time held the mortgage on the Property.⁶ In return, the mortgage company provided a release of mortgage.⁷

d. Approximately fifteen (15) months after Mr. Brown's father passed away, on April 19, 2006, someone recorded a deed to the Property in the Official Records of Alachua County, Florida.⁸ This deed, which

⁵ The word "apparently" is appropriate. Mr. Brown or Kim Brown have attached a copy of this will, dated October 11, 2004, to pleadings filed with this Court. Doc. 56, pp. 48-49. Kim Brown has submitted a *copy* of the will to probate in Alachua County, Florida (*see, infra*). The record is devoid of evidence of the existence of an original will.

⁶ *See* Doc. 56 at 50.

⁷ *See id.* at 52.

⁸ *See* Doc. 47, Exhibit "D".

was notarized but not witnessed, appears to have been signed by Mr. Brown's father on April 4, 2000, and purports to transfer title to the Property to Kim Brown.⁹

e. There is no record of any deed to the Property having been issued or recorded in favor of Mr. Brown, as was provided in Mr. Brown's father's will.

f. The Property is where Mr. Brown grew up, and was formerly his parents' homestead. Mr. Brown resides there along with his girlfriend and child, who stay with him part-time. Kim Brown and some of Mr. Brown's siblings apparently also reside in the Property, along with some of the siblings' children.¹⁰

g. The mortgage and note upon which the foreclosure action is based are dated July 18, 2007, and bear signatures of Kim Brown. These documents are dated more than two years after Mr. Brown's father passed away, and more than one year after the prior mortgage was paid out of Mr. Brown's father's life insurance proceeds.

⁹ *Id.*

¹⁰ Mr. Brown is his father's sole biological child. Mr. Brown's siblings have apparently all been adopted through the foster care system.

h. Kim Brown now maintains that her signature on the subject note and mortgage was forged or that the documents are fraudulent; she has apparently tried unsuccessfully to assert this defense in state court.

i. Before Mr. Brown filed the instant Chapter 13 case, Kim Brown had filed four (4) Chapter 13 cases in order to stay Goshen's foreclosure of the Property.¹¹ In addition, Kim Brown appealed the final judgment of foreclosure, appealed the issuance of the initial Writ of Possession, and has filed numerous other emergency motions and motions for rehearing in state court. All of these actions and appeals have been concluded.¹²

j. In 2015, upon motion by the Chapter 13 Trustee, this Court dismissed Kim Brown's most recent Chapter 13 case with prejudice for two (2) years.¹³ This two year bar on Kim Brown re-filing is due to expire on April 24, 2017.¹⁴

¹¹ Case No. 12-10157-LMK, filed on April 25, 2012, dismissed on July 2, 2012; Case No. 13-10385-KKS, filed on November 27, 2013, dismissed on February 2, 2014; Case No. 14-10126-KKS, filed on May 7, 2014, dismissed on June 30, 2014; Case No. 15-10042-KKS, filed on February 19, 2015, dismissed with prejudice on April 24, 2015.

¹² See Goshen's Exhibit 2; Goshen's Exhibit 6.

¹³ See Case No. 15-10042-KKS, *Order Dismissing Case with Prejudice on Chapter 13 Trustee's Notice of Debtor's Failure to Comply with Order Denying Chapter 13 Trustee's Motion to Dismiss with Prejudice with Conditions*, Doc. 57. Goshen had also filed a motion to dismiss Kim Brown's case with prejudice. Case No. 15-10042-KKS, Doc. 19.

¹⁴ See *id.* at 6.

k. At the hearing on the Motions, Mr. Brown testified that the Property is “his” because it has always been his home and his father always intended him to have it. It is apparent that this is what Mr. Brown truly believes, based partly on the copy of the document purporting to be his father’s will. Mr. Brown did not list the Property as an asset on his Schedule A/B, but did list it as exempt on his Schedule C.¹⁵

l. From his testimony at the hearing, it appears that Mr. Brown is or was confused by the dates and events surrounding the Property; especially in light of Kim Brown’s prior representations and testimony in this Court. For example, it appears that Mr. Brown is, or was, under the misapprehension that the \$96,000 check sent to the mortgage company in 2005 paid off the mortgage that is the subject of Goshen’s foreclosure action. Mr. Brown did not seem to understand, at least until the hearing, that the mortgage foreclosed by Goshen was signed more than two years after his father passed away, and more than a year after the prior mortgage was paid off with his father’s life insurance proceeds.

¹⁵ Doc. 31, pp. 1, 3.

m. Although Mr. Brown claims to own the Property, in all four of her most recent cases filed in this Court, Kim Brown swore under penalty of perjury that she owned the Property.¹⁶

n. As a matter of public record, based on the deed recorded in 2006, Kim Brown was the record title owner of the Property when the Goshen note and mortgage were signed in 2007, and each time she has filed bankruptcy since 2012 in order to stay Goshen's foreclosure. Kim Brown remained the record title owner of the property until the Circuit Court issued the Certificate of Title to Goshen on July 24, 2015.¹⁷

o. Mr. Brown has only two creditors: one with a claim secured by his truck and another with a claim based on his purchase of some furniture.¹⁸ He testified that his payments to both creditors were current when he filed this case and remained current through the date of the hearing.

p. Mr. Brown's Chapter 13 plan provides for \$300 monthly plan payments.¹⁹ Mr. Brown's Schedules I & J reflect net disposable income

¹⁶ See Case No. 12-10157-LMK, Doc. 1; Case No. 13-10385-KKS, Doc. 1; Case No. 14-10126-KKS, Doc. 22; Case No. 15-10042-KKS, Doc. 47.

¹⁷ These statements are recitations of fact based on the documents the Court took judicial notice of and received into evidence at the hearing on the Motions, and do not constitute conclusions of law as to the validity or effect of the 2006 deed to Kim Brown.

¹⁸ See Doc. 31 at 6.

¹⁹ See Doc. 32.

of only \$100 per month.²⁰ At the hearing, Mr. Brown at one time testified that he does extra work for his uncle in the lawn service business, and that this work generates the extra \$200 per month needed to fund his plan. Mr. Brown did not list such income on his Schedule I.²¹ He later changed that testimony and said that his only income is from his full-time job, which is listed on his Schedule I. He thus verified that his net disposable income is \$100.00 per month, and not \$300.00 per month.

q. Mr. Brown admitted that his only reason for filing this case was to save “his” home (the Property). He testified that Kim Brown helped him prepare the papers for filing this case.

r. As of the hearing, Mr. Brown had not completed Credit Counseling, either pre- or post-petition. As of the date of this Order, Mr. Brown has still not obtained Credit Counseling, and his motions for waiver of that counseling have been denied.²²

s. Mr. Brown’s Chapter 13 Plan makes no provision for payments of any kind to Goshen. Mr. Brown is not indebted to Goshen and did not sign the note or mortgage that were the subject of the foreclosure.

²⁰ See Doc. 31 at 12.

²¹ Doc. 31, p. 10.

²² Docs. 36, 69, 72 and 78.

t. When he filed this case, Mr. Brown requested to pay the filing fee in installments.²³ The Court granted this request.²⁴ As of the date of the hearing, Mr. Brown had paid \$40.00 of the filing fee due of \$310.00.²⁵

u. The same day Mr. Brown filed the petition commencing this case, Kim Brown filed a *Petition for Summary Administration Without Will* with the Probate Court in and for Alachua County, Florida, commencing Probate Case No. 01-2017-CP-000161.²⁶ The Docket in the Probate Case reflects that the will submitted to probate, entitled “Last Will and Testament of Buford Carl Brown, Jr. Without Codicil,” was a photocopy, rather than an original.²⁷

v. The Probate Docket contains no mention of Goshen and is devoid of any entry showing that Goshen was named in or provided any notice of the filing of the Probate Case. That fact notwithstanding, at the March 2 hearing before this Court Mr. Brown filed in evidence a certified copy

²³ Doc. 3.

²⁴ Doc. 16.

²⁵ Since the hearing, Mr. Brown has paid more money toward the filing fee; *see Docket* entry March 20, 2017.

²⁶ The *Order of Summary Administration* states that it was entered on the petition of Kim Brown, Antonio Tyrone Brown, Anthony Rufus Brown, Sharon Renee Brown, Teresa Lashay Brown, Tara Michelle Brown and Toya Tamikra Brown. Debtor’s Exhibit 1, *Order of Summary Administration*, recorded in Official Records of Alachua County, Florida at O.R. Book 4498, Page 11.

²⁷ Doc. 41, Exhibit D.

of an order of the Probate Court entered on February 28, 2017.²⁸ Based on representations in the pleadings filed with the Probate Court, that order states, among other things, that “all interested persons have been served proper notice of hearing, or have waived notice thereof.”²⁹ There is no evidence that Kim Brown provided the Probate Court any notice of the pendency of Goshen’s foreclosure, or that the Clerk of the Circuit Court had issued a Certificate of Title in favor of Goshen almost two years before she filed the probate action.

w. The *Order of Summary Administration* also states that title to the Property shall vest in Buford Carl Brown, III, “[a]fter release of the mortgage on the real property.”³⁰ This language, read in isolation and without knowledge of the facts as they existed as of the date of the order, could be read to apply to Goshen’s mortgage, rather than the mortgage that was in place when Mr. Brown’s father passed away in 2005.

²⁸ Debtor’s Exhibit 1, *Order of Summary Administration*, recorded in Official Records of Alachua County, Florida at O.R. Book 4498, Page 11.

²⁹ *Id.* at p. 1. That order also states and purports to put title to the Property in Mr. Brown’s name, by virtue of the copy of his father’s will. *Id.* At the hearing, Kim Brown attempted to justify the filing of the probate by testifying that someone at the Alachua County Attorney’s office told her that the 2000 deed to her from Mr. Brown’s deceased father, recorded in 2006, was ineffective to convey title because that document was not witnessed.

³⁰ *Id.*

x. At the March 2 hearing before this Court, Kim Brown testified in addition to Mr. Brown. Kim Brown insisted that she never signed the 2007 note or mortgage that are the subject of the foreclosure action by Goshen; and that reflect that she borrowed \$138,000.00 for which she pledged the Property as collateral. She insisted that the note and mortgage are a forgery and vehemently denied that she or Mr. Brown have acted in bad faith by filing serial bankruptcy petitions.

y. Kim Brown insisted that due to the probate action, she does not own the Property, and in fact declared during the March 2 hearing that she has never owned the Property.

z. Kim Brown also testified that Goshen purposefully used an incorrect address for service in the state court foreclosure action, essentially to prevent her from knowing what was happening in the foreclosure. The foreclosure docket reflects otherwise: Kim Brown was served at two addresses in the state court foreclosure action, the physical address of the Property and a post office box. A careful review of the state court foreclosure docket shows that while mail sent to the Property's physical address was returned, mail addressed to the P.O. Box was not.³¹

³¹ See Goshen's Exhibit 2.

aa. Kim Brown's testimony is completely contrary to the pleadings she has filed and testimony she has given in her prior bankruptcy cases.

bb. Not only has Kim Brown sworn under penalty of perjury in her bankruptcy cases that she owned the Property,³² she requested that her last case be dismissed so she could continue negotiating a modification of Goshen's mortgage. In the order dismissing Kim Brown's last Chapter 13 case with prejudice, this Court stated, in part:

At the hearing the debtor [Kim Brown], in essence, wanted to dismiss her case voluntarily, without prejudice or, alternatively, wanted one more chance to proceed with this Chapter 13 in order to attempt a Mortgage Modification Mediation ("MMM") on her home. She did not deny the material facts as to her prior bankruptcy filings; rather, she explained that most of her dismissals were as a result of conversations with various parties, including Goshen's predecessor, who told her they might be able to help her modify her home mortgage, but would not do so while she was in bankruptcy.³³

cc. Kim Brown offered no explanation of how or why a deed dated and signed in 2000 was recorded in 2006 after her husband died, and in spite of the clear direction in her husband's will dated in 2004. Kim

³² See *supra* at n.14.

³³ See Case No. 15-10042-KKS, *Order Dismissing Case with Prejudice on Chapter 13 Trustee's Notice of Mr. Brown's Failure to Comply with Order Denying Chapter 13 Trustee's Motion to Dismiss with Prejudice with Conditions*, Doc. 57.

Brown did not offer any explanation as to why the Property was never deeded to Mr. Brown after his father's death, or why she made no effort to probate Mr. Brown's father's will until 2017.

dd. None of the Chapter 13 plans Kim Brown filed in any of her past four Chapter 13 cases included provision for payment of the mortgage due to Goshen.

ee. Kim Brown did not file a motion for Mortgage Modification Mediation in her most recent case, even though that was an avenue available to her.³⁴

ANALYSIS

Goshen seeks two forms of relief. First, Goshen requests that Mr. Brown's Chapter 13 case be dismissed with prejudice, including a two (2) year bar against Mr. Brown filing another bankruptcy petition. Secondly, Goshen requests entry of an order granting it prospective relief from the automatic stay, pursuant to 11 U.S.C. § 362(d)(4), in recordable form that will prevent any additional bankruptcy filing from affecting title to the Property. Goshen argues that Mr. Brown filed this case in

³⁴ The Court's Mortgage Modification Mediation procedures were adopted effective September 22, 2014, after Kim Brown had filed all but her most recent case, Case No. 15-10042-KKS, on February 19, 2015.

bad faith as a serial filing to Kim Brown's prior cases, and for that reason prospective stay relief is not only justified, but warranted.

Goshen is entitled to some form of relief to permit it to finally complete the foreclosure that it filed and has been pursuing since 2012. The question is what form of relief provided in the Bankruptcy Code will provide Goshen the opportunity to finalize the foreclosure and gain possession of the subject property, especially in light of the order issued by the Probate Court on February 28, 2017, that purports to put title to the Property in Mr. Brown's name post-petition.³⁵

By the time the foreclosure was filed, Buford Carl Brown, Jr., Mr. Brown's father, was deceased. The docket in the foreclosure case reflects that Goshen named "The Estate of Buford Carl Brown, Jr.," as a defendant.³⁶ The Circuit Court appointed a licensed attorney as Guardian ad Litem for the Estate of Buford Carl Brown, Jr.³⁷ That attorney filed a report in his capacity as Guardian ad Litem, and based in part on that

³⁵ Neither Mr. Brown nor Kim Brown sought or obtained relief from the automatic stay to file the Probate Case, so it appears that the *Order of Summary Administration* may be void, *ab initio*.

³⁶ Doc. 47, Exhibit "C". This Court took judicial notice of the foreclosure docket. For some reason, Goshen also named "Buford Carl Brown, Jr., Unknown Tenant," as a defendant in the foreclosure. *See id.* This is curious, because Buford Carl Brown, Jr. could not have been a tenant – he was no longer living.

³⁷ *See id.* at 6.

report the Final Judgment of Foreclosure was entered against the “estate” of Mr. Brown’s deceased father.³⁸ Ultimately, the Circuit Court entered final judgment against all named defendants. That, in turn, resulted in the issuance of the Writ of Possession issued by the Clerk of Court for the Eighth Judicial Circuit court on January 20, 2017, which commands the Sheriff of Alachua County, Florida to remove “*all persons*” from the Property.³⁹ “All persons” apparently includes Mr. Brown, who resides there, even though Mr. Brown was not named as a defendant in the foreclosure.⁴⁰

The rulings of the Circuit Court in the foreclosure are final; Kim Brown has exhausted all appeals of those rulings.⁴¹ Goshen has received no payments on account of its claim since at least 2011, and has expended considerable sums in attorneys’ fees and costs in the foreclosure action,

³⁸ Doc. 47, Exhibit “A”. It appears that the Circuit Court determined that this sufficiently dealt with any interest that Mr. Brown may have had in the Property as a beneficiary under his father’s will.

³⁹ Goshen’s Exhibit 8.

⁴⁰ Mr. Brown’s name is “Buford Carl Brown, III.” There is no record of Buford Carl Brown, III having been named or served in the foreclosure action as a defendant individually, as a tenant, as an unknown tenant or in any other capacity aside from being an heir under his father’s will. Instead, Goshen named Mr. Brown’s deceased father, Buford Carl Brown, Jr., as “Unknown Tenant I.” See Goshen’s Exhibit 2. As to Buford Carl Brown, Jr., as unknown tenant, the docket in the foreclosure case reflects that service was made via posting and/or publication. Why Goshen named the deceased father as a tenant defendant, and how service of process could have been made on a defendant who had died several years before the foreclosure, is a mystery.

⁴¹ See Doc. 54, Exhibit “H”.

and in combating the effects of this case and Kim Brown's four (4) prior Chapter 13 cases.

All of Kim Brown's most recent four Chapter 13 cases were dismissed due to Kim Brown's failure to comply with the Bankruptcy Code, failure to file required documents, or failure to make Chapter 13 Plan payments.⁴²

At the March 2 hearing, Mr. Brown testified that he mailed his first \$300.00 Chapter 13 plan payment to the Trustee on February 28, 2017. The Trustee had not received a plan payment as of the hearing on March 2, 2017. The Trustee's *Notice of Filing Chapter 13 Trustee's Receipts* shows that as of March 30, 2017, the Trustee had received \$0 from Mr. Brown.⁴³

CONCLUSIONS OF LAW

It is without question, and Mr. Brown admits, that Mr. Brown filed this case for the sole and exclusive purpose of further staying Goshen's foreclosure. Even though that is true, and even though such filing

⁴² See Case No. 12-10157-LMK, Doc. 19; Case No. 13-10385-KKS, Doc. 35; Case No. 14-10126-KKS, Doc. 48; Case No. 15-10042-KKS, Doc. 57.

⁴³ Doc. 71.

amounts to a “bad faith” filing for purposes of the Bankruptcy Code, it is difficult under these facts to find that Mr. Brown acted with ill intent or bad motive. Mr. Brown was a minor when his father passed away; he was still a minor when the original mortgage loan was paid off with his father’s life insurance proceeds; he remained a minor when someone recorded the 2000 deed from his father to his mother, Kim Brown, in 2006; and was still a minor in 2007 when Kim Brown signed the note and mortgage that are currently in foreclosure.

Mr. Brown’s father’s will, assuming it is authentic, directed that the Property be deeded to Mr. Brown. Mr. Brown is his father’s sole living descendant. Mr. Brown has continued living in the Property since his father passed away. Because of his youth, apparent lack of sophistication, and no doubt in part due to his mother’s representations over the years, it is believable that Mr. Brown honestly feels that the Property is “his,” because that is what his father wanted. There is no evidence that Mr. Brown had any involvement in preparing or recording the deed of the Property to his mother, Kim Brown, executing the Goshen mortgage and note, or in Kim Brown’s past four bankruptcy filings. The probate docket

reflects that Kim Brown, not Mr. Brown, submitted a copy of the father's will to probate.⁴⁴

Nonetheless, Goshen is entitled to some relief from the serial bankruptcy filings of Mr. Brown and his mother, Kim Brown. The Final Judgment of Foreclosure was entered on December 21, 2012. Goshen has been the record owner of the Property since the Certificate of Title issued on July 24, 2015. It is now April of 2017. Goshen still has received no money, and Kim Brown, Mr. Brown and their respective family members still have possession of the Property. Although the instant case has only delayed Goshen by a few weeks or couple of months, Kim Brown's preceding serial filings delayed the foreclosure by over three years.

Under these facts it is appropriate to grant Goshen prospective relief from stay as to the Property. Bankruptcy Code Section 362(d)(4) allows a court to terminate, annul, modify or condition the automatic stay, after notice and a hearing:

⁴⁴ It is possible that Mr. Brown's mother, Kim Brown, has convinced Mr. Brown that the 2007 mortgage and note were forged. Based on the state court foreclosure docket (Doc. 47, Exhibit "C"), it is unclear whether Kim Brown presented the "forged documents" argument to the state trial court. It appears that Kim Brown may have raised this argument for the first time on appeal. See Goshen's Exhibit 6, First District Court of Appeal Case Docket, *Kim W. Brown v. U.S. Bank, N.A.*, Case No. 15-D15-3706. At no time in her 2015 bankruptcy case did Kim Brown claim that the Goshen documents were forged. Rather, she requested that her case not be dismissed so she could attempt to modify Goshen's mortgage claim via court-ordered mediation.

[W]ith respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved ... (B) multiple bankruptcy filings affecting such real property.⁴⁵

Goshen is such a creditor, with a claim secured by an interest in the Property. The instant case is clearly part of a scheme to delay and hinder, if nothing else, Goshen's efforts to finalize its foreclosure.

As of the petition date, Mr. Brown had a possessory interest in the Property. The Property is located in Florida, thus Florida law controls.⁴⁶ Under Florida law, a possessory interest in real property is only extinguished upon the execution of a writ of possession.⁴⁷ Here, while Goshen obtained a writ of possession prior to the petition date, that writ had not been executed when Mr. Brown filed this bankruptcy proceeding.⁴⁸

⁴⁵ 11 U.S.C. § 362(d)(4).

⁴⁶ *In re Hobbs*, 221 B.R. 892, 894 (Bankr. M.D. Fla. 1997).

⁴⁷ *See id.* ("Until a writ of possession is executed and the tenant is removed from the premises, a tenant whether involved in a bankruptcy case or not has a right to retain possession of her leased housing.").

⁴⁸ *See* Goshen's Exhibit 2. The Writ of Possession was issued on January 20, 2017. Mr. Brown filed this case on January 26, 2017 and notice of the bankruptcy was given to the state court on January 27, 2017. The Writ of Possession was returned unexecuted on January 31, 2017.

Mr. Brown's possessory interest in the Property became property of the estate pursuant to Section 541.⁴⁹ As property of the estate, this possessory interest in the Property was protected by the automatic stay.⁵⁰ Any attempt to enforce a writ of possession is an attempt to divest the possessory interest in the Property and is an act against real property under subsection (a) of Section 362.⁵¹ An order providing prospective stay relief pursuant to Section 362(d)(4) is appropriate under these circumstances, so that Goshen's efforts to obtain possession of the Property are not further thwarted by bankruptcy filings.

Prospective stay relief is particularly effective against tag-team filers who seek to prevent foreclosure, as the stay relief attaches to the property, not necessarily to the parties.⁵² The reason this type of order is so effective is "because it will not be affected by subsequent bankruptcy

⁴⁹ 11 U.S.C. § 541 provides that the estate includes "all legal and equitable interests of the debtor in property at the commencement of the case." *See also In re Salov*, 510 B.R. 720, 728 (Bankr. S.D.N.Y. 2014) ("Property of the estate encompasses *all* rights and interests that a debtor may have in a property. The right to own is a separate right from the right to possess or the right to occupy and yet, all are property of the estate.").

⁵⁰ *In re Dominguez*, 312 B.R. 499, 506 (Bankr. S.D.N.Y. 2004) ("It is well settled that a debtor's mere possessory interest in premises, even absent any legal interest, is protected by the automatic stay."); *see also Addon Corp. v Gaslowitz (In re Addon Corp.)*, 231 B.R. 385 (Bankr. N.D. Ga. 1999).

⁵¹ *In re Salov*, 510 B.R. at 732 (Creditor's attempt to enforce a writ of assistance against a debtor with a possessory interest in the subject property was a violation of the automatic stay pursuant to § 362(a)(3)).

⁵² *In re Selinsky*, 365 B.R. at 264.

filings by the debtor” or third parties.⁵³ In order to grant relief under § 362(d)(4), the following three elements must be present:

(1) the debtor’s bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor’s consent or court approval, or (b) multiple bankruptcy filings affecting the property.⁵⁴

The Court finds that Mr. Brown’s current bankruptcy filing is a part of a scheme to hinder or delay Goshen and that such scheme involved multiple bankruptcy filings by Mr. Brown and Kim Brown. While Mr. Brown may not have had ill intent in filing this case because he truly believed the Property was, or should be, his, he still knew that filing this case would further delay Goshen’s foreclosure.

Even if Kim Brown convinced Mr. Brown to file this case, the filing of this petition is a sufficient basis on which to grant prospective stay relief.⁵⁵ Section 362(d)(4) does not require a finding that Mr. Brown was actively complicit in the serial filing scheme. As at least two bankruptcy courts have pointed out, Section 362(d)(4) is written in the passive voice,

⁵³ *In re Roeben*, 294 B.R. 840, 846 (Bankr. E.D. Ark. 2003).

⁵⁴ *In re Dorsey*, 476 B.R. 261, 265-66 (Bankr. C.D. Cal. 2012).

⁵⁵ It was apparent at the hearing that Mr. Brown, who is not highly sophisticated in business or financial matters, filed this case at his mother’s urging and with his mother’s help, and that this case is another step in Kim Brown’s scheme to hinder and delay Goshen.

and does not require any active involvement by a debtor.⁵⁶ Mr. Brown's Chapter 13 petition has been used as part of a plan or scheme to delay or hinder Goshen by extending the protection of the automatic stay to him, as an occupant of the Property.⁵⁷ This use of a petition is precisely what Section 362(d)(4) was enacted to prevent: "abusive filings." Having found the elements of §362(d)(4) satisfied, the Court will grant Goshen's request for prospective relief as to the Property.⁵⁸

In addition to this petition having been used as a part of a scheme to hinder, delay or defraud, it is also clear that: 1) Mr. Brown did not file this Chapter 13 in a legitimate effort to restructure his financial affairs; 2) Mr. Brown does not qualify as a debtor because he has never had credit counseling; 3) the Property is not property of this bankruptcy estate; and 4) Mr. Brown has failed to make a single plan payment to the Chapter 13 Trustee.

⁵⁶ *In re Dorsey*, 476 B.R. at 267; *In re Duncan & Forbes Development, Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2016).

⁵⁷ *In re Dorsey*, 476 B.R. at 267-68.

⁵⁸ An order granting prospective stay relief, if properly recorded by Goshen "in compliance with applicable State laws governing notices of interests or liens in real property," would become binding "in any other case" under Title 11 which purports to affect the Property that is filed within two years after the date of the order. The entry of an order pursuant to Section 362(d)(4) also provides that "a debtor in a subsequent case" under Title 11 may move for relief from such order based on "changed circumstances" or "good cause shown," after demonstrating as much at a hearing after proper notice. 11 U.S.C. § 362(d)(4).

Bankruptcy Code Section 109(h)(1) provides, in material part:

[A]n individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency ... an individual or group briefing (including a briefing conducted by telephone or on the Internet)...⁵⁹

Mr. Brown admittedly has not received such credit counseling. So, Mr. Brown does not qualify for Chapter 13 bankruptcy relief in any event.

Section 1307(c) allows a court to dismiss a Chapter 13 case “for cause,” and sets forth eleven (11) specific examples.⁶⁰ Aside from the fact that Mr. Brown does not qualify as a debtor, Mr. Brown’s case may be dismissed due to his non-payment of the remainder of his filing fee, and his failure to commence making timely Chapter 13 plan payments.⁶¹ In addition, this case may be dismissed for a “cause” not enumerated in Section 1307(c).

In the Eleventh Circuit, cause is determined using a “totality of the circumstances” test outlined in *In re Kitchens*, which provides fourteen

⁵⁹ 11 U.S.C. § 109(h)(1). Certain exceptions are available, but none are applicable to Mr. Brown. 11 U.S.C. § 109(2).

⁶⁰ *In re Selinsky*, 365 B.R. 260, 262 (Bankr. S.D. Fla. 2007) (quoting *In re Farber*, 355 B.R. 362, 366 (Bankr. S.D. Fla. 2006).

⁶¹ 11 U.S.C. §§ 1307(c)(2) and (c)(4).

(14) non-exclusive factors for courts to consider.⁶² The fifth *Kitchens* factor asks courts to examine the “motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13.”⁶³ Mr. Brown admitted that he filed this case with the sole intent to delay or hinder Goshen’s efforts to complete the foreclosure process.

Numerous cases have held that “filing a bankruptcy petition merely to prevent foreclosure, without the ability or the intention to reorganize, is an abuse of the Bankruptcy Code.”⁶⁴ While Mr. Brown may not be operating in “bad faith” as non-lawyers might interpret that phrase, the Court cannot find that Mr. Brown filed this Chapter 13 petition in good faith as required by the Bankruptcy Code.⁶⁵

A review of the history of this case, and the related cases filed by Mr. Brown’s mother, Kim Brown, shows that mere dismissal will not be sufficient to prevent further abuses of the Bankruptcy Code. The Court believes that Mr. Brown, or, with help from Kim Brown, one of the other residents of the Property, is likely to file a new case upon dismissal.

⁶² 702 F.2d 885, 888-889 (11th Cir. 1983).

⁶³ *Id.* at 888.

⁶⁴ *In re Felberman*, 196 B.R. 678, 681 (Bankr. S.D.N.Y. 1995) (and cases cited therein); *In re Selinsky*, 365 B.R. at 262.

⁶⁵ *In re McGovern*, 297 B.R. 650, 656 (S.D. Fla. 2003) (“[T]he debtor must file his Chapter 13 petition in good faith.”) (Emphasis in original).

Courts are authorized to bar debtors from refiling when those debtors have previously filed abusive bankruptcy cases.⁶⁶ This authority is provided pursuant to Section 349(a), which permits the Court “for cause” to condition dismissal in a manner that is different than what is provided for in Section 349.⁶⁷ Having determined that this petition was filed in bad faith, as part of a scheme to hinder or delay Goshen, the Court finds cause to bar Mr. Brown from filing a new bankruptcy case for a period of 180 days.

The Court also finds cause to further bar Mr. Brown’s mother, Kim Brown, from filing a new bankruptcy case, for a period in addition to the two year bar already ordered by the Court in Kim Brown’s most recent bankruptcy case.⁶⁸ Although Kim Brown is not a debtor in this case, the Court has authority to bar her from filing a new bankruptcy case. In *In re Kinney*, the bankruptcy court considered a scheme where various members of one family filed ten bankruptcy cases over a period of just

⁶⁶ *In re Selinsky*, 365 B.R. at 265 (barring debtor and debtor’s spouse from filing a new case for two years); *In re Rusher*, 283 B.R. 544, 549 (Bankr. W.D. Mo. 2002) (barring debtor from filing a new case for a period of 1068 days); *In re Brown*, 319 B.R. 691, 695 (Bankr. M.D. Ala. 2005) (two year bar for successive filings).

⁶⁷ *In re Selinsky*, 365 B.R. at 265.

⁶⁸ *In re Brown*, Case No. 15-10042-KKS, *Order Dismissing Case with Prejudice on Chapter 13 Trustee’s Notice of Mr. Brown’s Failure to Comply with Order Denying Chapter 13 Trustee’s Motion to Dismiss with Prejudice with Conditions*, Doc. 57.

over two years, all with the intent to protect a single property.⁶⁹ The court found that “the names changed when each of the new actions was filed, but in substance, the parties and issues did not.”⁷⁰ The court continued,

Here, the actions of each family member can be imputed to the rest of the family due to the unity of interest and concert of action... . In the presence of such a scheme, the individuality of each of the debtors is blurred, revealing one common entity with five operatives. Under such circumstances, *orders binding one family member should bind the others as well*.⁷¹

In *In re Norley*, the bankruptcy court relied on the language from *Kinney* to deny a motion to reconsider its order barring a non-debtor spouse from future filings.⁷² The court in *Norley* found that it had jurisdiction over the non-debtor spouse because he insisted on participating at the hearing.⁷³ Other bankruptcy courts, in reviewing motions for prospective stay relief and dismissal, as the Court is presented with in this case, have determined that the bankruptcy court can bar a non-debtor from filing future bankruptcy cases.⁷⁴

⁶⁹ *In re Kinney*, 51 B.R. 840, 845 (Bankr. C.D. Cal. 1985).

⁷⁰ *See id.*

⁷¹ *See id.* (emphasis added).

⁷² *In re Norley*, 2002 WL 1752280, at *5 (Bankr. E.D. Penn. June 24, 2002).

⁷³ *See id.*

⁷⁴ *See In re Schlupp*, 2005 WL 2483209, at *6-7 (Bankr. E.D. Penn. Sept. 2, 2005); *In re Selinsky*, 365 B.R. at 266.

As the court in *Selinsky* explained, motions for dismissal for cause and for stay relief are both governed, in part, by Bankruptcy Rule 9014, which requires that “reasonable notice and opportunity for hearing” be afforded the party against whom relief is sought.⁷⁵ Kim Brown was afforded reasonable notice and opportunity to be heard. Mr. Brown testified that Kim Brown assisted him with filing this case. Kim Brown appeared at and participated in the March 2 hearing. Kim Brown had knowledge of the hearing because of her closeness and familiarity with Mr. Brown’s case, the fact that she resides in the Property with Mr. Brown, and the fact that she caused Mr. Brown to file this case for one reason and one reason only – to stay the foreclosure by preventing service of the writ of possession on Mr. Brown. For these reasons, the additional relief in this order, comprised of a further bar against Kim Brown filing a new bankruptcy petition for an additional 180 days, is appropriate under the terms of Rule 9014.

⁷⁵ 365 B.R. at 266.

The Court also has jurisdiction over Kim Brown by way of its dismissal with prejudice of her most recent bankruptcy filing.⁷⁶ Bankruptcy Code Section 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of any issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.⁷⁷

Having determined that the filing of this Chapter 13 case was part of an abusive scheme, it is entirely appropriate to utilize the power granted to this Court by Section 105 of the bankruptcy code to prevent a further abuse of process by the party who master-minded the scheme.

For the reasons stated, it is ORDERED:

1. The *Amended Motion for Prospective Relief* (Doc. 20) is GRANTED.

⁷⁶ *In re Brown*, Case No. 15-10042-KKS, *Order Dismissing Case with Prejudice on Chapter 13 Trustee's Notice of Debtor's Failure to Comply with Order Denying Chapter 13 Trustee's Motion to Dismiss with Prejudice with Conditions*, Doc. 57.

⁷⁷ 11 U.S.C. § 105(a).

2. Goshen is directed to submit, within three (3) business days from the date of this Order, a separate order in recordable form that grants prospective stay relief pursuant to 11 U.S.C. § 362(d)(4).
3. Goshen's *Amended Motion to Dismiss Debtor's Bankruptcy Case with Prejudice* (Doc. 19) is GRANTED. Immediately after entry of the order granting prospective stay relief, as set forth above, this Chapter 13 case shall be DISMISSED WITH PREJUDICE, pursuant to 11 U.S.C. § 349(a) of the United States Bankruptcy Code. BUFORD CARL BROWN III, is enjoined from filing a petition for relief under any chapter of the Bankruptcy Code for a period of 180 days from the date of this Order. The Clerk of the Court is authorized and directed to refuse any further bankruptcy petitions from Mr. Brown for a period of 180 days from the date of this Order.
4. KIM WILLIAMS BROWN is enjoined from filing a petition for relief under any chapter of the Bankruptcy Code for a period of 180 days, commencing on April 24, 2017. The order dismissing Kim Brown's last case, *In re Brown*, Case No. 15-10042-KKS, shall be supplemented to reflect this ruling. The Clerk of the

Court is authorized and directed to refuse any bankruptcy petitions from Kim Brown during this additional 180 day period.

5. Mr. Brown and Kim Brown must pay all fees due to the Clerk in full before the commencement of any future bankruptcy case in this Court.
6. This Order is without prejudice to Goshen's rights to seek a determination of the validity of the *Order of Summary Administration* issued by the Circuit Court of Alachua County, Florida, Probate Division, on February 28, 2017, in Case No. 01-2017-CP-161, in any forum that may be appropriate.

DONE and ORDERED on 19th day of April, 2017.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all parties in interest, specifically including:

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